

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH JAMES SVIRBELY,

Petitioner,

V.

SUPERINTENDENT DAVID GOODE,
et al.,

Respondents.

Civil Action No. 06-222 Erie

MEMORANDUM ORDER

This petition for writ of habeas corpus was transferred from the Middle District of Pennsylvania and received by the Clerk of Court on September 20, 2006. It was then referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On April 26, 2007, Petitioner filed a motion for leave to proceed *in forma pauperis*.

The Magistrate Judge's Report and Recommendation, filed on May 17, 2007, recommended that leave to proceed *in forma pauperis* be denied, it appearing that Petitioner has an average monthly balance of \$52.60 in his prison account which amount far exceeds the \$5.00 filing fee required to commence this action, and it further appearing that Petitioner would not be deprived of any necessities of life by virtue of being required to pay the filing fee. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail at SCI Cresson, where he is incarcerated, and on Respondents. Petitioner has filed no objections to Magistrate Judge Baxter's Report and Recommendation. After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 8th day of June, 2007;

IT IS HEREBY ORDERED that the Petitioner's motion [8] for leave to proceed *in forma pauperis* is DENIED.

The Report and Recommendation of Magistrate Judge Baxter, filed on May 17, 2007 [12], is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
SEAN J. McLAUGHLIN
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge